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January 20, 2021

**Via ECF**

Honorable John P Cronan  
United States District Court Judge  
Eastern District of New York  
United States Courthouse  
500 Pearl Street Rm. 1320  
New York, New York 10007

**Re:** Marianela Susana v. NY Waterway Tours LLC et al.  
1:20-cv-00455  
HBN File No. 18.0049

Dear Judge Cronan,

We represent the Defendants and write, pursuant to Rule 5.C. of your Honor's Individual Rules, to request a conference with the Court regarding Plaintiff's failure to properly respond to Defendants' interrogatories and document requests. The parties have conferred in good faith via telephone on December 22<sup>nd</sup> and January 13<sup>th</sup> but have been unable to resolve the underlying dispute.

On December 4, 2020 Defendants served interrogatories and document requests on Plaintiff. Plaintiff responded to those requests on December 10<sup>th</sup>. Plaintiff made numerous objections, which Defendants believed were improper, and failed to properly respond to multiple requests for production.

On December 15, 2020 Defendants sent to Plaintiff via email a letter outlining their issues with Plaintiff's Responses. Exh. 1. Counsel telephoned Plaintiff's counsel on December 22<sup>nd</sup> whereby they discussed the issues regarding Plaintiff's responses and although Plaintiff's counsel maintained

some of his objections were valid (e.g. objecting to Defendant's request to identify all medical providers with whom Plaintiff had sought treatment from in the last 10 years), counsel agreed to provide amended responses to the interrogatories and document requests by the end of the year. Further, counsel agreed that if Defendants still took issue with the amended responses they could file a motion to compel as the meet and confer requirement per your Honor's Induvial Rules and the Local Rules had been met.

On January 5, 2021, having not received Plaintiff's amended responses, Defense counsel sent another letter via email reminding Plaintiff of his agreement and in addition provided case law from this District to support the interrogatory requesting Plaintiff identify all medical providers she received treatment from with the 10 years prior to the incident. Exh. 2.

Plaintiff provided amended responses on January 7, 2021. Exh. 3. In these amended responses, Plaintiff again failed to identify her past medical providers, supporting her objection with a citation of section §3043 of the NY CPLR. Exh. 3, pg. 4. Moreover, Plaintiff failed to respond to 5 demands for production by either objecting generally with no explanation as to the grounds of the objection, stating "not applicable," or simply providing no response at all. See Exh. 3, page 13-16.

On January 12, 2021 Defendants emailed Plaintiff outlining their issues with the amended responses and stated that they intended to file a motion to compel with the Court within 24 hours. On January 13, having not heard back from Plaintiff, the undersigned Counsel, in a last attempt to avoid motion practice, telephoned Plaintiff. Plaintiff stated that he had not received the email of the January 12 due to email problems. The undersigned counsel reiterated Defendants' issues with the amended discovery responses. Plaintiff's counsel stated that he had been having trouble communicating with his client. Defendants gave Plaintiff a week to address their issues and properly respond to discovery requests.

Having received no response from Plaintiff, Defendants are forced to request the Court's intervention. Defendants respectfully request a conference with the Court so their issues may be addressed and remedied if the Court sees fit.


**Defendants' Issues with Plaintiff's Amended Responses:**

- Plaintiff's failure to identify medical care providers she received treatment from within the period of ten years prior to the alleged incident. Interrogatory #1 – Exh. 3, page 4;
- Plaintiff's Response to Interrogatory #12 – Exh. 3, page 11;
- Plaintiff's Response ("not applicable") to Production Demand #13 – Exh. 3, page 13;
- Plaintiff's Response ("not applicable") to Production Demand #14 – Exh. 3, page 13;
- Plaintiff's failure to provide authorizations. Response to Production Demand #16 – Exh. 3, page 13-14;
- Plaintiff's Response ("to be provided, if applicable") to Production Demand #21 – Exh. 3, page 15;
- Plaintiff's failure to respond to Production Demand #23 – Exh. 3, page 16.

It is hereby ORDERED that Plaintiff shall respond to Defendants' letter-motion by January 29, 2021. It is further ORDERED that the parties shall appear for a telephone conference on February 2, 2021 at 2:00 p.m. At the scheduled time, counsel for all parties should call (866) 434-5269, access code 9176261.

SO ORDERED.

Date: January 26, 2021  
New York, New York

  
JOHN P. CRONAN  
United States District Judge

Very Truly Yours,

HILL, BETTS & NASH LLP.

  
Patrick O'Connor

PJO/sas

cc: *All Counsel via ECF*